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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4293/2016

Reserved on: 17th February, 2017

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Date of Decision: 1st May, 2017

PARAMJIT KAUR

..... Petitioner

Through Mr. S. S. Tiwari, Advocate

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through Mr. Santosh Kumar Tripathi, ASC
and Mr. Rizwan, Advocate for
GNCTD

Mr. Ravinder, Aggarwal and Mr.
Girish Pande, Advocate for UGC

Ms. Manisha Singh, Advocate for
Mr. Amit Bansal, Advocate for R-4

Mr. Ashok Kumar Pamgrahi,
Advocate for NCERT

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

By way of the present writ petition, the petitioner-Paramjit Kaur has challenged the order dated 29.07.2015 passed by the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') in the Original Application (OA) No. 2166/2013.

2. The brief facts of the case are, that pursuant to the Advertisement No. 02/2010 in July 2010 issued by the Delhi Subordinate Services Selection Board (DSSSB, for short) the petitioner had applied for the post of Post Graduate Teacher (Biology) (Female), Post Code No. 040/10. The essential qualifications stipulated for the aforesaid post were as follows:-

"1. Master's Degree (or its equivalent Oriental Degree in the case of PGT Sanskrit/Hindi) in the subject concerned from any recognized University.

2. Degree/Diploma in Training/Education

"Qualifications mentioned at S.No. 2 above relaxable in the case of candidates: (i) having obtained Ph. D Degree in the subject concerned from a recognized University/Institution; or (ii) having obtained First Division in Higher Secondary, Degree and Post Graduate Examination with the mandatory condition that the candidate will acquire the B.Ed./B.T. qualification within a period not exceeding three years from the date of his joining the service.

Desirable: 3 years, experience of teaching in a College/Higher Secondary School/High School in the subject concerned."

3. The essential qualification of Degree/Diploma in Training/Education was relaxable in the case of candidates (i) having obtained Ph.D. Degree in the subject concerned from a recognised University/Institution or (ii) 1st Division in Higher Secondary, Degree and Post Graduate Examination with the mandatory condition that the candidate would acquire the B.Ed./B.T.

qualification within a period not exceeding three years from the date of his joining the service.

4. The petitioner appeared for the objective type written examination on 08.01.2012, wherein she was successful. She appeared in the descriptive (main) examination, in which again she was successful. As per the result declared on 06.08.2012, the petitioner had obtained 141 marks and secured third rank on the merit list. The petitioner was accordingly vide letter dated 14.12.2012 directed to get her documents verified by the E-II (Respondent No.3) branch on 27.12.2012.

5. The first candidate in the merit list Ms. Archana Yadav was issued appointment order dated 18.03.2013 by the respondents. Iqbal Kaur and Manisha Rajpal, the candidates securing the 4th and 6th rank in the merit list were also issued appointment order dated 30.04.2013. Subsequently, the candidature of the petitioner was cancelled vide office order dated 24.09.2013. The reason was that in the meeting held on 22.05.2013 under the chairpersonship of Dr. (Smt.) Sunita Kaushik, the expert committee had concluded as under:-

"1. The candidate for the post of PGT (biology) must have M.Sc. degree in Botany or Zoology as they can impart the basic

concept in Biology clearly to teach the students at the Senior Secondary level.

2. As the candidates go higher in any specialised branch (i.e., Bio0Technology, Bio-Chemistry, Micro-Biology and Genetics) other than M.Sc. Botany or Zoology, they will not do justice to the basic subject of Biology upto Senior Secondary level. Further, specialised branches (i.e., Bio-Technology, Bio-Chemistry, Micro-Biology and Genetics) are only the small components of the syllabus or course contents taught to the students at the Senior secondary level.

3. As a PGT (Biology) the candidate with M.Sc. Botany/Zoology are more suitable to teach students the foundation course at the senior secondary level."

The petitioner has a bachelors' degree i.e. B. Sc. (Hons) in Botany and a M. Sc. in Biotechnology. Accordingly, the petitioner was declared ineligible as per the decision of the expert committee.

6. The petitioner has submitted that none of the selected candidates had M.Sc. (Biology) degree due to the fact that no university awards this degree. Biology is a broad spectrum subject for the study of natural sciences. The petitioner contends that the schools being affiliated to the Central Board of Secondary Education (CBSE, for short), are bound to follow their instructions on equivalence of degrees etc. CBSE Bye-law 53(v) in Chapter IX clearly states that M.Sc in Life Science with Zoology and Botany at graduation level are eligible for PGT (Biology). In the

present case, M.Sc (Biotechnology) is a discipline of Lifescience/biology.

The relevant portion of CBSE bye-law 53 (v) in Chapter IX is as under:-

“Biology (Either 1 or 2)

- 1 (a) Master;s degree in Botany or zoology with Zoolgoy or Botany.

OR

Master’s Degree in Zoology with Botany at graduate level.

OR

M.Sc. in Life Science with Zoology and Botany at graduate level.

AND

- (b) Degree in Education or three years teaching experience of Intermediate or higher classes.
2. M.Sc. Ed. In the subject concerned from Regional Institute of Education, NCERT.”

Bye law 53(v), has been further clarified vide amendment dated 29.06.2010 to state that Post-graduation in Microbiology, Molecular Biology, Agricultural Botany, Genetics or other related disciplines would be treated as par with M.Sc Botany or Zoology provided it is preceded by graduation in Botany/Zoology. The Tribunal and the respondents have overlooked these aspects and declared the petitioner as ineligible and therefore, disqualified to be appointed to the post of Post Graduate Teacher (Biology) (Female).

7. The issue to be decided is whether petitioner is eligible, in view of having B.Sc. (H) in Botany and M.Sc. (Biotechnology), for appointment to the post of PGT (Biology) (Female).

8. The impugned order demonstrates that the Tribunal has refrained from substituting their opinion for that of experts constituted for the specific purpose of deciding equivalence of degrees. The aforesaid precept cannot be doubted and challenged. However, the courts or tribunals have been given the liberty to examine whether there was any error or mistake in the decision making process, while examining and deciding the question of equivalence; whether the Committee or the experts had delved into, and examined, the question of equivalence at the first instance in its right prospective, what was the opinion expressed by the experts, and whether the relevant aspects and parameters had been applied or ignored by relying upon irrelevant considerations.

9. It would be appropriate to note that during the course of proceedings before us, the question raised by the petitioner as recorded in the order dated 16.05.2016, which reads:-

“The Expert committee set up for the purpose came to the conclusion that candidates with M.Sc. Botany/Zoology would be “more suitable”. The contention of the petitioner is

that “more suitable” is not the proper test. The test to be applied is that of equivalence. This he submits has resulted in an error in the decision making process.”

Difference between "suitability" and “eligibility” is apparent and does not require any explanation or elucidation. The question of eligibility has to be examined with reference to the qualifications prescribed. Suitability, on the other hand, would refer to the assessment and selection of one who is better in comparison.

10. The National Council of Educational Research and Training (NCERT) in pursuance of the court order, have filed their counter affidavit. The petitioner would rely upon this affidavit filed by the NCERT in support of her stand and stance. The relevant paragraphs of the counter affidavit of the NCERT are being reproduced below:-

“3. In this regard, it is submitted that the opinion was sought from the Professor and Head of Department, DESM (Department of Education in Science and Mathematics) whether M.Sc. (Biotechnology) is equivalent to M.Sc. (Botany/Zoology) and the petitioner is eligible for appointment to the post of PGT (Biology).

4. The opinion is cited below as:

“A candidate possessing Post-Graduate in Biotechnology and who has studied Botany and Zoology at graduate level and Biology at Higher Secondary level may be considered.”

Prior to this, it was also opined by the same Professor that Bio-technology is a specialized area under Biology.”

On the question, whether M.Sc. (Biotechnology) is equivalent to M.Sc. (Botany/Zoology), the opinion expressed states that the candidate possessing Post-Graduate in Bio-technology and who has studied Botany and Zoology at the graduate level and Biology at Higher Secondary level may be considered.

11. The petitioner possesses a B.Sc. (Hons) Degree in Botany and M.Sc. degree in(Biotechnology) which, as per the opinion of the expert Committee state above, is equivalent to M.Sc. (Botany) as required in the advertisement and Recruitment Rules for the post of PGT (Biology).

12. In view of the specific affidavit of the NCERT dated 15.12.2016, we are of the opinion that the petitioner possesses the necessary qualifications as required under the advertisement and recruitment rules for the post of PGT (Biology) and would be eligible for appointment to the said post. Equivalence is never examined in a vacuum but with reference to the Recruitment Rules and the work and job requirements on the post.

13. The question of equivalence, in the light of the aforesaid specific opinion of the NCERT, that the degree of M.Sc. (Biotechnology) with a

degree in B.Sc. (H) in Botany at the graduation level is an equivalent degree, must be answered in favour of the petitioner.

14. Hence, in view of the aforesaid discussion and opinion, we find that there is merit in the present writ petition and the same is accordingly allowed. The impugned order of the Tribunal dated 29.07.2015 is quashed and set aside. We direct the respondents to consider the candidature of the petitioner for appointment as Post Graduate Teacher (Biology) (Female), Post Code No.040/10. The petitioner, however, would not be entitled to the arrears of pay and the appointment to the said post would take effect from the date the petitioner is so appointed. The respondents would complete the aforesaid exercise within a period of two months from the date of this judgment. There would be no order as to costs.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

May 01, 2017

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